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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

Conservatorship of the Person and Estate of R.D.	H041736 (Santa Clara County Super. Ct. No. 1-14-MH-038053)
KRISTINA CUNNINGHAM, Petitioner and Respondent, v. R.D., Objector and Appellant.	

Appellant R.D. was adjudged by a jury to be gravely disabled, within the meaning of the Lanterman-Petris-Short Act (LPS Act), Welfare and Institutions Code section 5350 et seq.[1] On appeal, he asserts error in the admission of (1) evidence that his conservatorship would last only one year and (2) hearsay from nontestifying experts and other sources. He further challenges the court's ruling that in his conservatorship he would not have the right to refuse routine medical treatment unrelated to his grave disability. We find no prejudicial error and therefore must affirm the judgment.

[1] All further statutory references are to the Welfare and Institutions Code except as otherwise specified

Procedural Background

On May 21, 2014, after receiving a referral from the psychiatric hospital at the Veterans Administration (VA) in Palo Alto, the Public Guardian filed a "Petition for Appointment of a Temporary Conservator and Conservator of the Person and Estate for a Gravely Disabled Person," pursuant to section 5350. The mission of the Public Guardian is to "safeguard the assets and the safety and security" of its clients, who have been found unable to "serve for themselves." In the petition the Public Guardian alleged that appellant was a gravely disabled person, within the meaning of the LPS Act.[2] The superior court appointed the Public Guardian as temporary conservator pending trial on the petition.

Trial Testimony

Appellant was transported to the VA from the Idylwood care facility in Sunnyvale on June 19, 2013, pursuant to section 5150,[3] after he was "found to be quite paranoid, to be quite disorganized, screaming and yelling and agitated at the facility." According to attending psychologist Dr. Kimberly Brodsky, when appellant arrived at the VA he was "disorganized. His mood was . . . extreme ups and downs, agitated, verbally assaultive

[2] Under the LPS Act "gravely disabled" includes "[a] condition in which a person, as a result of a mental health disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter." (§ 5008, subd. (h)(1)(A).)

[3] Future references to a "5150 hold" are to this statute, which provides, in pertinent part: "When a person, as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, professional person in charge of a facility designated by the county for evaluation and treatment, member of the attending staff, as defined by regulation, of a facility designated by the county for evaluation and treatment, designated members of a mobile crisis team, or professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention, or placement for evaluation and treatment in a facility designated by the county for evaluation and treatment and approved by the State Department of Health Care Services."

towards staff . . . His speech was quite disorganized."[4] Within a day or so appellant reported that he was hearing "voices from Jesus." By July 2 he was threatening to kill the staff of the Idylwood facility with an assault weapon. And during that month he developed a chronic problem sleeping; he spent nights engaged in "a lot of production and disorganization and different projects that don't . . . lead anywhere," which was a symptom of mania. The lack of sleep, Dr. Brodsky added, "can contribute to the extremes in mood, the disorganization." The VA's attempts to address appellant's persistent insomnia had been unsuccessful, as he had refused to take medications.

At trial Dr. Brodsky was qualified as an expert in the determination of grave disability. She was "very familiar" with appellant, having overseen his care for the past year and a half on the acute psychiatric unit of the hospital. Dr. Brodsky diagnosed appellant with schizoaffective disorder.[5] She had "no doubt" about this diagnosis, adding, "And he's been evaluated by many providers who concur with that assessment." Appellant's counsel moved to strike that comment as hearsay; county counsel, however, explained that it was offered not for the truth of the matter asserted but for "the basis of the opinion [on] which Dr. Brodsky relies." The court overruled the objection.

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[4] "Disorganized speech," Dr. Brodsky explained, "is one in which individuals might start to speak in what is considered a tangential way or they might jump from topic to topic. [¶] There doesn't seem to be any linearity where they're making kind of clear sentences in their conversation and following a line of topic. [¶] Their responses to questions don't seem to be appropriate or actually a direct response to what you're asking. [¶] It appears that they have difficulty kind of taking in what they're hearing and processing that, as well as being able to speak in a way that's coherent."

[5] Dr. Brodsky described schizoaffective disorder as "a disorder that involves both psychotic symptoms [and] mood symptoms . . . To have [schizoaffective] disorder, you need to have had either a period of mania or a period of significant depression where you have highs and lows in your mood . . . in addition to also having some of the psychotic symptoms, which go along with schizophrenia, which include delusions, hallucinations, and also . . . disorganized thought and . . . a lack of the ability to initiate certain things and care . . . ."

Dr. Brodsky went on to testify that in weekly meetings with many of the practitioners at the VA all agreed that appellant had schizoaffective disorder. In general, whenever a practitioner at the VA tried to talk to him, whether about his diagnosis, recommended medications, or potential placements, appellant would get "very upset" and agitated; he would "either storm out of the room or shout threatening statements." When a social worker tried to discuss potential placements, appellant threw water in her face "and shouted at her that she was a bitch and she should get out of the room." He refused medication or anything else that might have alleviated pain, he refused physical therapy, and he lashed out at the other veterans. At times he was found "incontinent or with feces in his room." Any suggestion that he return to the Idylwood facility or move to a board-and-care home was met with shouting and threats to escape or throw himself in front of a car.

In October 2013 appellant was discharged to a transitional shelter, the only place he was willing to go. Very shortly thereafter, however, the VA staff learned that it was not working out; appellant's needs for care "far exceeded" what the shelter could provide. It did not offer assistance with medication regimen or activities of daily living (ADLs),[6] and appellant was not able to manage his medications. His shoes and clothing had disappeared. Even though at one point the shelter hired someone temporarily to provide appellant his medications, the staff there eventually concluded that they could not keep him there any longer. Appellant had urinated in his bed, in the hallway, and in various places in the dorm he shared with other residents. He had refused to shower, he required assistance from the staff to wash his clothes, he was "minimally ambulatory," and he

[6] Dr. Brodsky described ADLs for the jury as "[t]hings like grooming and hygiene. Being able to use the rest room. Being able to shower yourself. Being able to take care of yourself. Brush your teeth. Things that we all kind of do to prep ourselves in shape [*sic*]."

needed his food to be prepared and presented to him. In November appellant was returned to the VA.

Upon being readmitted to the VA appellant appeared to be inadequately medicated; he was "somewhat paranoid" and again "extremely disorganized. He was again agitated, yelling and screaming at staff." Within a few days of his return, however, appellant said he wanted to live there, even though it was a locked, highly restrictive facility designed for "a very short-term stay."

The staff at the VA always worked hard to find appropriate, less restrictive settings and avoid conservatorships. In May 2014 Dr. Brodsky wrote a history of appellant's treatment in preparation for his discharge to an extended-stay hotel in San Jose. His discharge diagnosis was schizoaffective disorder, accompanied by Parkinson's disease, a pulmonary disease (COPD), cataracts, and bilateral hearing loss. Dr. Brodsky did not feel that the extended-stay hotel, which was across the street from the clinic, was appropriate for appellant; she believed he needed a "locked skilled nursing facility," and by the time of trial five months later, that was still her opinion.

As it turned out, appellant was at the extended-stay hotel for less than 24 hours. Upon his return he was again "very disorganized. He was in a very soiled state . . . covered in feces and urine." Although he appeared to be disorganized, upset, and agitated—verbally assaulting the staff, brandishing his walker, and refusing to shower—he insisted that he did not have a psychiatric illness. He exhibited emotional lability[7] and grandiosity, in which "somebody believes that they're capable of doing things that they aren't capable of doing." Consequently, he would refuse to adhere to treatment

[7] Emotional lability refers to "[t]hose highs and lows in mood," from "very down, very depressed, very isolated, not . . . caring for himself" to "not needing sleep, engaging in lots of different projects that don't really go anywhere, not having the ability to think in a logical way about making decisions, making unsafe decisions, spending money, things like that."

recommendations and suffer reduced functioning. Whenever he had refused to take his prescribed medications over the prior few years, his symptoms had worsened.

Hospital staff were also concerned that appellant was writing multiple letters a day, sometimes enclosing checks—which, along with pressuring nursing staff to make purchases through the Internet, illustrated another symptom of his mania, "a lack of judgment and insight." Dr. Brodsky cautioned that if appellant, who was "quite frail," were in a store and someone moved too close to him, he could start "flailing out" and get injured or endanger someone else. The occupational therapist at the VA determined, after an evaluation in September 2014, that appellant "didn't have the ability to make safe decisions, that he had very quick shifts in his mood, that he at times was laughing and at other times was angry and agitated, that he made impulsive decisions, and that he was not able to attend to his own ADLs."

By May 12, 2014, it was clear to Dr. Brodsky and the treatment team that appellant was, due to mental illness, "gravely disabled and unable to provide food, clothing, or shelter in multiple different placement options." He continued to require assistance in the basic tasks of daily living "and was not able to assert a reasonable plan for food, clothing, or shelter." Dr. Brodsky explained to the Public Guardian in her May 12 referral that appellant's grave disability manifested in his unawareness of his surroundings, an inability to retain information about his medications, his inability to maintain shelter, and his need for assistance with grooming, washing clothes, dressing, and personal hygiene. Appellant had been admitted to the VA hospital six times, and before that he had been admitted "many times" to Valley Medical Center under similar circumstances. His stay at the Idylwood skilled nursing facility had lasted three years.

Dr. Brodsky did not make referrals to the Public Guardian lightly; her goal as a practitioner was always to "help people function at their highest possible level . . . to get them to a point where they can be living as independently as possible." But in light of appellant's history of previous placements, his inability to provide for his basic needs,

and his denial that he needed psychiatric care and concomitant refusal to comply with prescribed medication and other treatment recommendations, Dr. Brodsky believed that he currently was gravely disabled. Appellant's mental disorder made him unable to "appropriately, safely, and effectively provide on his own for his basic needs for food, clothing, and shelter." He could not function without his prescribed medications—of which there were at least 20—but he would not take those medications without supervision. Given his history of being unable to care for himself in multiple placements, at this point, even if he proposed a plan for living independently, appellant would be incapable of executing it.

Soni Adams, a case manager and supervisor at the VA, also testified at trial as an expert in the determination of grave disability and ability to live independently. A licensed clinical social worker, she was authorized to diagnose mental disorders, including schizoaffective disorder, and she was familiar with the standards for determining whether a person was gravely disabled under the LPS Act. Adams defined "gravely disabled" as "unable due to a psychiatric condition to provide for food, clothing, or shelter." Among her roles was evaluating people to determine whether and where a person could live independently or function with assistance. Adams evaluated appellant about 15 times, beginning in early December 2013. Based on those evaluations, her review of his medical and psychiatric records, and discussions with her treatment team, she diagnosed appellant with schizoaffective disorder. In attempting to help appellant formulate a plan for independent living, Adams was unsuccessful; he refused to go to a board-and-care or "structured living" facility, and all of the veterans' retirement homes were unavailable to him because of his inability at self-care.

Adams recalled the May 1, 2014 discharge to the extended-stay hotel, which took hours to accomplish. Although she and Joyce Kim, another social worker on the treatment team, assisted appellant in the transfer and preparation for the stay, appellant was "very easily confused and overwhelmed" in the new setting. He struggled to use the

room access card and to lock the door. He did not remember how to handle the microwave or coffee pot, and he did not appear to understand how to take his medication or how to use his inhaler. The next morning Adams checked on appellant; she detected an odor "like burned food and old coffee . . . a little bit like feces." Appellant told her he "had had some issue but he had taken care of it." Adams advised the treatment team that she was concerned, and a nurse, Amy Kelsey, visited appellant.

Over a hearsay objection by appellant's counsel, Adams related the findings Kelsey reported on after her visit: "Ms. Kelsey did not find that Mr. D[.] was able to manage his medications independently and was very concerned about the possibility of harming himself by accidental . . . use or confusion of taking the wrong meds." Kim then visited appellant; she reported that appellant was incontinent and that the bathroom was covered in feces. Appellant had tried to clean it with the hotel towels but had only made "a bigger mess." Appellant was placed on another "5150 hold" and transported back to the VA hospital. That hold led to a further detention under section 5250, which allows an evaluating facility to certify a person for intensive treatment for "not more than 14 days" if the facility "has found [that] the person is, as a result of a mental health disorder . . . a danger to others, or to himself or herself, or gravely disabled."

Adams saw appellant again on September 18, 2014, after the LPS conservatorship petition was filed. When asked about a plan for a potential discharge, appellant indicated that he would like to be discharged to a motel—a suggestion that indicated to Adams "a lack of insight and concerns about grandiosity with him being able to execute a plan that's been clearly demonstrated that he can not." Adams asked appellant to demonstrate the steps he would take to use the telephone and take his medication; but appellant did not evince any understanding of how to accomplish these tasks, and he became "very angry and frustrated." When county counsel asked Adams about the occupational therapy evaluation, she described it as "a reaffirmation" of her own opinion that appellant "could not live independently and he needs significant support."

In a September 23, 2014 visit, Adams asked appellant what his plan would be "if he should win his trial." During that visit appellant displayed "really poor frustration tolerance and really kind of expansive mood swings—so happy at one minute, angry, laughing inappropriately, frustrated, and . . . irritable all within a span of about 30 minutes." His plans included buying a condominium and moving to an assisted living facility; but when Adams explored with him the logistics of securing such places, appellant became angry and frustrated, and he demonstrated an inability to articulate or understand the procedures involved in either plan. In Adams's opinion, appellant did not have "the judgment and insight to be able to provide food, clothing, or shelter without assistance." She was concerned that he was vulnerable to being exploited, and he even struggled with necessary small tasks such as locking the door. Also of concern was his inability to hold on to his clothes during the weeks at the transitional shelter. Consequently, in her expert opinion, based on "reasonable medical probability," appellant was not able "to appropriately, safely, and effectively provide on his own for his basic needs for food, clothing or shelter." He was, she believed, gravely disabled.

Kerrick Lee, the "Lead Deputy Public Guardian conservator" who processed LPS referrals from local hospitals, was qualified as an expert in the field of LPS conservatorship, "and specifically, with respect to resources available to the mentally ill, which assist in meeting an individual's basic needs for food, clothing, and shelter." As the temporary conservator for appellant, his role as appellant's "advocate" was to "investigate [appellant's] need for a one-year conservatorship [and] rule out any and all alternatives." Lee met with appellant five or six times between May 28 and October 2, 2014. He had personally observed appellant being "very docile and placid" and at other times "very unreasonable. Loud. Yelling. Staff has to intervene to make sure everything is okay." The second visit, on July 2, 2014, progressed from cursing to screaming and yelling at Lee, "beyond a ten-level rage." The third (July 9) and fourth (September 17) visits were also unproductive, as defendant refused to talk to Lee. At the October 2 visit

appellant argued with Lee over the date of the upcoming trial and then walked away. Lee continued after that to have contact with appellant as well as with his treatment team. Based on his own observations of appellant and the information he had received from the treatment staff, Lee believed that appellant could not function independently in the community and was "in need of a conservatorship to provide for his basic needs."

Appellant testified in his own behalf. He stated that he did not believe he had a mental illness and did not believe he needed any help with daily activities. He believed that if he were living independently, he would be able to negotiate all of his activities by himself. He managed dressing and his other "personal wants" himself; he did not remember what happened to his clothes and shoes at the transitional shelter, but at the VA he had been taking care of himself.[8] Appellant acknowledged that he did not take showers at the shelter; he kept himself clean by taking sponge baths instead. Since his return to the VA he had loved taking showers because they were so relaxing. He did not remember Dr. Brodsky's testimony that he returned from the shelter "extremely dirty, unkempt, malodorous."

Appellant also acknowledged having urinated in bed and on the floor at the shelter; he explained that he had had an operation that increased the size of his urethra, which had led to lost urine. He denied any other problems at the shelter, however; he had not been confused and had no problem managing his "care needs" there. The only

[8] It cannot escape notice, however, that the VA is "a very structured environment, where his food is provided for him, his meals are cooked for him, he gets assistance with his ADL, he gets medication administered to him every day, and he's engaged in activities [that] have been designed for the unit to help de-escalate people, like groups and activity groups." Patients also have "nurses who check on them every 15 minutes. They have assistance with things like getting any belongings that they might need, doing their laundry. They attend daily treatment groups. They see doctors in rounds. They get medication management. [¶] If someone is agitated or upset . . . [staff members] work to try and help de-escalate them by talking to them or whatever might be needed."

difficulty he had was carrying food, because of his walker. He was on a special soft diet because a dentist at the Idylwood care center had removed his teeth to profit from the gold in them. He did not remember Adams's testimony about his having difficulty shopping for groceries or heating a meal in the microwave, or about the discovery of feces all over his room at the extended-stay hotel. He did recall being unable to control his bowels at the extended-stay hotel; he had had seven Cokes and two cups of coffee that day. He had tried to clean up the mess, but it was too much for him. Even though he did not know how to use a microwave, appellant just knew that it would be different living on his own.

Appellant acknowledged that he needed medication. He also agreed that sometimes he behaved in an aggressive and threatening manner, but that was only when people threatened him. He would "take enlightenment" to control his angry and threatening behavior. He denied that he had ever heard voices; he was only joking when he said he heard Jesus speaking to him. Appellant admitted that he had not taken the medications Adams had separated into daily compartments and shown him how to take. But he believed that if he had his own place, he would change.

The jurors heard testimony on October 9 and 14, 2014. The court then instructed them that the Public Guardian had the burden to prove beyond a reasonable doubt that (a) appellant had a mental disorder described in one of the later editions of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association; (b) appellant was gravely disabled due to that mental disorder, and (c) he was "unwilling or unable voluntarily to accept meaningful treatment"—for example, if he would not take his prescribed medication without supervision. "Gravely disabled" was defined for the jury as "presently unable to provide for his or her basic needs for food, clothing, or shelter because of a mental disorder."

On October 14, 2014, the jury unanimously found appellant to be "presently gravely disabled due to a mental disorder." On November 3, 2014, the superior court

issued a judgment finding by clear and convincing evidence that appellant was disqualified from possessing a firearm, the privilege to operate a motor vehicle, the right to enter into contracts, the right to refuse or consent to routine medical treatment related specifically to his being gravely disabled, and the right to refuse or consent to routine medical treatment unrelated to remedying or preventing the recurrence of his grave disability. (§ 5357.) From that judgment appellant filed a notice of appeal, which we will construe as having been filed from the amended judgment on December 19, 2014.

Discussion

1. *Instruction and Evidence of Duration of Conservatorship*

Shortly before trial began, the Public Guardian, through county counsel, moved in limine to present evidence that an LPS conservatorship is limited in duration to one year. The Public Guardian argued that the evidence was necessary to combat a prevalent public misconception of the mentally ill being "warehoused in state facilities and treated abysmally possibly for the rest of their lives." Appellant, on the other hand, moved to exclude all evidence of both the one-year duration and the care or treatment he would receive in a conservatorship.

The Public Guardian also proposed a special jury instruction that would inform the jurors that the conservatorship would terminate after one year, or sooner if during that period he was determined to be no longer gravely disabled. Appellant's attorney argued that such an instruction would be "reversible and prejudicial error . . . This is something the jury is not permitted to know about, the consequences of the verdict." Counsel noted that CACI No. 4004 would instruct the jurors that they were not permitted to consider the type of treatment, care, or supervision that might be ordered with a conservatorship. The court, however, expressed the opinion that it was "important that a jury know that it's of a fixed period of time." An instruction that told the jurors only that the conservatorship would terminate after one year would not, in the court's view, abrogate appellant's rights or constitute punishment. The court thus concluded that the instruction would not harm

appellant, and it eventually informed the jury simply that "[a] conservatorship lasts for one year." At trial witnesses confirmed that this would be a one-year conservatorship.

Appellant asserts prejudicial error in the court's decision to give the special instruction, renewing his claim that in a civil commitment, whether of a Sexually Violent Predator (SVP), a Mentally Disordered Offender (MDO), or a gravely disabled conservatee, a jury may not be told "the consequences of their verdict." (See, e.g., *People v. Kipp* (1986) 187 Cal.App.3d 748 (*Kipp*) [error to tell jurors that verdict in NGI extension proceeding would determine whether release or continued confinement would occur]; *People v. Collins* (1992) 10 Cal.App.4th 690, 696 [error to instruct jury that it would decide whether appellant should be hospitalized as an MDO or released on parole because it could have encouraged the jury "to ignore the evidence and decide the case based on their fear [of the mentally ill]," following *Kipp*]; *People v. Rains* (1999) 75 Cal.App.4th 1165 [error to admit evidence that if found to be an SVP, defendant would be committed to a hospital for a two-year period and would receive treatment].)

Here, appellant argues, the one-year duration of the proposed commitment and what would take place during that period were "totally irrelevant" to the question of whether he was gravely disabled. In his view, the Public Guardian misused Evidence Code section 352 by seeking to *admit* evidence rather than to exclude it. Because the evidence was irrelevant, "any prejudicial effect substantially outweighed [its] probative value," which was "obviously very, very low." That prejudicial effect "was to (falsely) reassure the jurors that they did not have to worry that they were committing appellant for the rest of his life. In effect, the jurors were told that their decision was not as important that [*sic*] they might think because it could be reconsidered next year or, perhaps, even sooner since the jury was told that the Public Guardian would often release people from conservatorships early. This made the situation worse because it told the jurors that the indecision was even less significant, because if appellant showed any signs of getting better, he could be immediately released from the conservatorship."

We cannot agree with appellant's position. First, unlike MDO and SVP commitments, the nature of the statement that "[a] conservatorship lasts for one year" would not have provoked fear in the jurors that a dangerous individual would be released into society. The question they confronted instead was whether appellant was able to provide for his own basic needs (food, clothing, or shelter) without the assistance of a conservator. The abundant evidence presented at trial established that appellant's mental illness was severe enough that, together with his refusal to take his prescribed medications, he was unable to provide for those basic needs. Consequently, we find no reasonable probability that a result more favorable to appellant would have occurred had there been no instruction or testimony adverting to the one-year duration of the proposed conservatorship.

2. *Expert Testimony*

Before trial appellant moved to exclude as hearsay the opinions of any experts who would not be testifying at trial, including the contents of any reports on which a testifying expert relied. The Public Guardian opposed the motion, citing Evidence Code section 801.[9] To the extent that the anticipated witnesses relied on reports of other doctors, the Public Guardian maintained, those would be matters "made known to him at or before the hearing, whether or not admissible, that . . . reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates."

[9] That section provides: "If a witness is testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is: [¶] (a) Related to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact; and [¶] (b) Based on matter (including his special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates, unless an expert is precluded by law from using such matter as a basis for his opinion."

(Evid. Code, § 801 subd. (b).) The court denied the motion. At trial Lee, representing the Public Guardian's office, testified that "[t]he Veterans Administration doctors" had diagnosed appellant as having schizoaffective disorder. Dr. Brodsky noted that appellant had "a long-standing diagnosis of [schizoaffective] disorder," having been "evaluated by many providers who concur with that assessment." And Adams testified that the nurse, Kelsey, had reported on her visit to appellant, after his stay at the extended-stay hotel, that appellant seemed unable to manage his medications independently.

Appellant contests the application of Evidence Code section 801. He acknowledges that the statute permits an expert to "form and testify to an opinion based upon" the opinions of non-testifying experts. He "simply contends that the testimony as to those expert's [*sic*] opinions was inadmissible hearsay." Appellant relies on *People v. Campos* (1995) 32 Cal.App.4th 304, where the court properly allowed a psychiatrist to testify regarding other professionals' opinions as a basis for forming their own diagnosis of the defendant as an MDO, but improperly admitted the content of those opinions and the reports of those nontestifying experts. (*Id*. at pp. 308-309.) The errors were harmless, however, as the inadmissible references were only a small portion of the psychiatrist's lengthy testimony, which "easily support[ed] the jury's determination that appellant met the MDO criteria. There was no miscarriage of justice." (*Id*. at p. 309.)

Here, too, we find any evidentiary error in the admission of the challenged statements nonprejudicial. Any reliance on nontestifying experts as support for appellant's diagnosis of schizoaffective disorder was harmless, as his attorney did not deny that appellant had a mental disorder or dispute the diagnosis, but questioned only its effect on his ability to lead an independent life. All three of the critical witnesses for the Public Guardian had personally observed behavior that alone convinced them that appellant was gravely disabled and in need of a conservatorship. Consequently, there was abundant *direct* evidence that appellant was unable to provide for his basic needs when left alone, independent of what they testified other experts had reported to them.

Appellant admits that "the testimony of the government's experts certainly qualified as sufficient evidence to establish that appellant suffered from schizoaffective disorder," but he asserts that it "was not overwhelmingly conclusive evidence and the jury could have chosen to disbelieve it." While acknowledging Lee's "extensive work experience in the mental health industry," appellant discredits Lee's testimony because Lee had only a college degree in psychology and therefore was not qualified to diagnose mental disorders. But the Public Guardian did not purport to qualify Lee to make such a diagnosis. The witness properly testified about his many personal interactions with appellant and the conclusions he drew from that experience.

Dr. Brodsky, appellant speculates, "could reasonably have been found to be biased" because "it was quite clear that the VA did not want to continue to provide treatment and a home for appellant." The premise of appellant's assertion of bias, however, is flawed. Dr. Brodsky testified that psychologists in her position "go into this field because we want to help people function at their highest possible level. I think the goal is always to get them to a point where they can be living as independently as possible." If the witness had been biased toward expelling appellant from the VA, she would have deemed appellant capable of living independently, a conclusion she could not ethically reach. The jury found Dr. Brodsky credible in her opinion that appellant was gravely disabled, and nothing in the record indicates that her testimony was inherently improbable or biased.

Appellant's assertion of bias in Adams's testimony is likewise based on her "motive to get appellant out of [the VA] system. Very likely the jury would have viewed the expert testimony as to appellant's diagnosis more skeptically if they [had not been] told that it was a unanimous diagnosis held by many other experts." The testimony appellant specifically contests, however, is not that her diagnosis was unanimous, but only Kelsey's report of appellant's difficulties at the extended-stay hotel.

Appellant admits that as a licensed clinical social worker Adams was "technically qualified to make a diagnosis"; he suggests, however, that "normally, such diagnoses are made by a psychologist or psychiatrist." Nothing in the record supports the inference that Adams was either unqualified or biased in either her diagnosis or her opinion about his ability to live independently. Adams's diagnosis of appellant was amply supported by the extensive amount of time spent with him, primarily in her effort to prepare him to live independently. That effort, of course, failed when appellant proved himself unable to meet his own basic needs for food, clothing, and shelter or to manage his medication regimen and personal hygiene. We must conclude, therefore, that even if error occurred, there is no reasonable probability that an outcome more favorable to appellant would have resulted had there been no mention of nontestifying witnesses' opinions.

3. *Hearsay Related to Observations by Other Staff Members*

Appellant next contends that a "a massive amount of inadmissible hearsay" was presented without any applicable exception. Lee, for example, testified, over appellant's objection, that at his first visit with appellant he solicited input from the staff about "the circumstances in which they referred Mr. [D.] to the [Public Guardian's] office." Lee said that they discussed the extended-stay incident "and why he was in the hospital. And also as to what was their plan, you know, moving forward with him." The court accepted county counsel's statement that the testimony was offered not for the truth of the matter asserted, but only as a basis for the expert's opinion. At Lee's second visit, during which appellant was screaming and yelling in rage at Lee, Lee again talked to staff, who told him that this behavior was "par for the course." In the October 2, 2014 visit, a nursing staff member again told Lee that "they were treading very lightly with Mr. D[.] [so] as [not to] get into arguments over . . . things that he was insisting on . . . that could serve no purpose." Lee also was permitted to state that appellant was placed on the section 5150 hold on May 2, 2014 because his social worker believed him to meet the criteria for being gravely disabled. He further described reports he had read in which appellant was

described as "extremely labile" in mood, "very difficult to work with," disoriented, lacking in insight, unable to communicate with staff without becoming "extremely agitated and upset," and unwilling to "even moderately cooperate with his treatment team."

Appellant also points to instances in Dr. Brodsky's testimony in which hearsay was introduced. In addition to her testimony about the "unanimous view" of other health care providers that appellant had schizoaffective disorder, she described an incident in September 2013 in which appellant came out of his room asking for a bathroom, even though there was a bathroom in every patient's room. Also in September 2013, she said, appellant told staff that if he were placed in a board-and-care home, he would escape. Dr. Brodsky further testified about the unsuccessful stay at the transitional shelter in Fremont in October 2013 and the shelter's advisement that it lacked the staff to provide the care appellant needed. She related at length the circumstances leading to appellant's being transported from the Idylwood care center to the VA in June 2013 and his verbal and physical behavior when he arrived, including his disorganized speech, his agitated and verbally assaultive behavior toward staff, and his extreme shifts in mood.

Appellant contends that this use of hearsay in the experts' testimony should not have been permitted. Appellant's continual objections to the references to others' statements were sufficient to preserve his hearsay claim on appeal. To the extent that he asserts a confrontation clause violation, however, that claim has been forfeited.

We find no abuse of the court's broad discretion in admitting the challenged testimony. (See *People v. Dean* (2009) 174 Cal.App.4th 186, 193 (*Dean*) [applying abuse of discretion standard to admission of hearsay in expert testimony].) As noted earlier, Evidence Code section 801, subdivision (b), generally permits an expert witness to base his or her opinion on matters made known to the expert, "whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates." "As a general rule,

out-of-court statements offered to support an expert's opinion are not hearsay because they are not offered for the truth of the matter asserted. Instead, they are offered for the purpose of assessing the value of the expert's opinion." (*Dean, supra*, at p. 193.) Indeed, our Supreme Court has applied Evidence Code section 801, subdivision (b), multiple times in upholding the admission of "hearsay not otherwise admissible." (*People v. Montiel* (1993) 5 Cal.4th 877, 918 (*Montiel*); *People v. Catlin* (2001) 26 Cal.4th 81, 137 (*Catlin*); see also *People v. Hill* (2011) 191 Cal.App.4th 1104, 1133 [testimony admitted under Evidence Code section 801, subdivision (b), is limited to evaluating the expert's opinion, not as independent proof of the facts stated therein or to help establish a prima facie case].)

Courts have recognized, however, that prejudice may arise if the expert testifies about the details of inadmissible matters on which he or she has relied. (*Dean, supra*, 174 Cal.App.4th at p. 196; *Montiel, supra*, 5 Cal.4th at p. 918.) "In this context, the court may ' "exclude from an expert's testimony any hearsay matter whose irrelevance, unreliability, or potential for prejudice outweighs its proper probative value." ' " (*Catlin, supra*, 15 Cal.4th at p. 137.) Nevertheless, disputes over the admissibility of the evidence " 'must generally be left to the trial court's sound judgment.' " (*Ibid*., quoting *Montiel, supra*, at p. 919.)

In this case, any error in admitting the testimony was, as with the admission of nontestifying experts' opinions, harmless. The court made it clear that it was admitting the evidence not for the truth of these descriptions, but for their effect on the witnesses in forming their expert opinions. The jury was accordingly instructed that "[t]he law allows an expert to state opinions about matters in his or her field of expertise even if he or she has not witnessed . . . any of the events involved in the trial." As noted earlier, the evidence based on the witnesses' direct observations was more than sufficient to convince the jury that appellant was in need of a conservatorship due to a grave disability caused by his mental health disorder. The only contrary evidence was appellant's own

protest that he did not believe he was mentally ill, that he could manage his own daily needs, that his difficulties were due to his age, and that if he had his way, he would take no medications at all. However, his testimony that he did not need help did not convince the jury that he could take care of his needs on his own; he was unable even to structure a viable plan for such independent living, much less show that he could emerge from a one-day hotel stay properly bathed, fed, clothed, and medicated. Neither counsel's failure to object on the grounds now asserted nor the admission of the evidence itself can be said to have been prejudicial.

4. *Requirement that Appellant Submit to Treatment Unrelated to Disability*

During trial, outside the presence of the jury, Adams was asked questions directed at the "five disabilities" described in section 5357: should appellant be permitted to possess a driver's license; should he have the right to enter into contracts; should he be permitted to possess a deadly weapon; should he have the right to refuse or consent to psychiatric treatment and psychiatric medications; and should he have the right to refuse routine medical treatment unrelated to his grave disability. Adams answered all in the negative. As noted earlier, the court's eventual judgment included the following order: "[R.D.] shall not have the right to refuse or consent to routine medical treatment unrelated to remedying or preventing the recurrence of him [*sic*] being gravely disabled."

Appellant contends that insufficient evidence supports this ruling.[10] We disagree. Dr. Brodsky testified that appellant had been prescribed at least 20 medications, not all related to his mental disorder. He also had Parkinson's disease, COPD, hearing loss, and cataracts. He needed assistance to get in and out of a car, move around the transitional shelter, use a bank card and motel key card, and reach for groceries. He appeared unable

[10] Appellant expressly states that he is not challenging the limitation on his operation of a motor vehicle or his right to own a gun, to enter into contracts, or to refuse consent to treatment related to his being gravely disabled.

to understand the need or procedure for taking his medications; he had refused even pain medications at the VA, and he took none of his prescribed medications during his brief stay at the hotel. Appellant himself testified that he had difficulty avoiding bowel and urinary accidents, which had caused him and his environment to be soiled with feces and urine, leaving him susceptible to infection. He admitted that he had had trouble preparing food in the microwave, even after being instructed in its operation. He admitted that even removing groceries from the shelves had been a difficult task for him and that completing the shopping transaction with Adams had been confusing. The court was entitled to infer from appellant's uncooperative attitude, his lack of judgment and insight, and his confusion over simple daily procedures that appellant needed assistance with all aspects of personal care, including routine medical treatment. Thus, the court had substantial evidence even beyond Adams's opinion to support its conclusion by clear and convincing evidence that all of the section 5357 disabilities should be imposed on appellant.

We thus conclude that neither evidentiary error nor insufficient evidence compromised the judgment granting the Public Guardian's petition and imposing the section 5357 restrictions on appellant. Further, appellant has not convinced this court that cumulative error compels reversal.

Disposition

The judgment is affirmed.

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ELIA, J.

WE CONCUR:

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PREMO, ACTING P. J.

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MIHARA, J.

Cunningham, as Public Guardian, etc. v. R.D.
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